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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 BANK OF AMERICA, N.A.,

8 Plaintiff,

9 v.

10 PEPPERTREE HOMEOWNERS
11 ASSOCIATION and TOW PROPERTIES, LLC
12 IV,

Defendants.

Case No. 2:17-cv-1857-KJD-EJY

ORDER

13 Before the Court is Plaintiff Bank of America, N.A.'s Motion to Lift Stay of Case (ECF
14 No. 32). Neither Peppertree Homeowners Association nor TOW Properties, LLC have
15 responded.

16 **I. Background and Analysis**

17 This case arises from the nonjudicial foreclosure sale by Peppertree Homeowners
18 Association on or about October 22, 2013, of a property located at 729 Nectarine Court, in
19 Henderson, Nevada. This case shares a similar fact pattern with many cases currently pending
20 before this Court, all having to do with HOA foreclosure sales. One of the issues before the
21 Court centers in whole or in part around the question of what notice of default the foreclosing
22 party was required to provide Plaintiff before foreclosure on a property. After the Nevada
23 Supreme Court's decision in SFR Invs. Pool 1, LLC v. U.S. Bank, the Ninth Circuit decided
24 Bourne Valley Court Tr. v. Wells Fargo Bank, N.A., 832 F.3d 1154, 1160 (9th Cir. 2016)
25 (holding NRS § 116.3116(2)'s statutory notice scheme was facially unconstitutional).

26 On April 21, 2017, in Bank of New York Mellon v. Star Hills Homeowners Ass'n, this
27 Court certified the following question to the Nevada Supreme Court: "Whether NRS
28 § 116.31168(1)'s incorporation of NRS § 107.090 requires homeowners associations to provide

1 notices of default to banks even when a bank does not request notice?” No. 2:16-cv-2561-RFB-
2 PAL, 2017 WL 1439671, at *5 (D. Nev. Apr. 21, 2017).

3 In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth
4 Circuit definitively answered the question that the statute’s “opt-in” framework was
5 unconstitutional. 832 F.3d at 1160. However, that left the Court with the unresolved question of
6 what notice must be provided. “It is solely within the province of the state courts to
7 authoritatively construe state legislation.” Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d
8 1141, 1145 (9th Cir. 2001). As such, state law questions of first impression like this one should
9 be resolved by the state’s highest court. See Huddleston v. Dwyer, 322 U.S. 232, 237 (1944).

10 On August 2, 2018, the Supreme Court of Nevada answered the certified question. See
11 SFR Invs. Pool 1, LLC v. Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018). Further, it has
12 since issued several opinions that may bear on the issues in this action. See, e.g., Wells Fargo
13 Bank, N.A. v. Tim Radecki, 426 P.3d 593 (Nev. 2018); Bank of America, N.A. v. SFR Invs.
14 Pool 1, LLC, 427 P.3d 113 (Nev. Sep. 13, 2018).

15 **A. Stay of the Case**

16 A district court has the inherent power to stay cases to control its docket and promote the
17 efficient use of judicial resources. Landis v. North Am. Co., 299 U.S. 248, 254–55 (1936);
18 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007). A
19 stay is no longer necessary in this action where the certified question has already been decided.

20 **B. Briefing Schedule**

21 The parties may either file a stipulation or move the Court for a modified discovery plan
22 and scheduling order as necessary. If the parties fail to do so, dispositive motions are due no later
23 than forty-five days after the entry of this order. Any future dispositive motions must address the
24 most recent case law applicable to the issues in this case.

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IT IS FURTHER ORDERED that stipulations, motions to modify the discovery plan and scheduling order, or in the absence of such stipulation or motions, dispositive motions are due within forty-five days of the entry of this order.


Kent J. Dawson
United States District Judge